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≡ Navigation



DISCUSSION KICK-OFF

The regulatory dimension of TTIP and the global competition of economic systems

Reflections on the on-going dispute over Europe's external trade policy

MAXIMILIAN OEHL — 24 February, 2016



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The proposed comprehensive free trade agreement (FTA) between the EU and the US bearing the name ‘Transatlantic Trade and Investment Partnership’ (or TTIP), continues to inflame passions within significant sections of the European public. The self-organized European citizens’ initiative ‘Stop TTIP’ with its over 3 million signatures stands

paradigmatically for the wide-spread concerns among large parts of civil society. Nevertheless, political leaders are determined to follow through with the undertaking and at times show equally heated reactions if confronted with criticism. This blogpost seeks to explain the EU executive's strikingly headstrong stance in favour of an FTA with the US by introducing some reflections from an international economic law perspective.

CPP, the world trade system and the 'death' of multilateralism

Why is TTIP important to the EU? In order to understand the EU Commission's determination to conclude TTIP, it is important to be aware that the proposed treaty constitutes a pivotal aspect of the EU's actual Common Commercial Policy (CCP). This connection was recently summarized in the EU Commission's 'Trade for All' policy paper. The CCP, in turn, needs to be read and understood in light of the functioning of the global trade system.

Within this wider sphere, the WTO as the key organisation for the agenda of liberalizing global trade has over the past decade witnessed a crashing decline in significance. Albeit still today a central element of the international economic system, particularly with regard to its dispute settlement mechanism, the organisation has in the recent past not been able to reconcile the increasingly divergent interests and positions of developed and developing countries. This led to a halt of the negotiations under the Doha Development Agenda, which was launched in 2001. Some authors go so far as to describe this occurrence as the 'death of multilateralism' within the world trade system.

Rise of the ‘new bi- and plurilateralism’ in international economic law

In order to make up for these deficits, a number of states, the US and the EU among them, resorted to what can be described as a new ‘bi- and plurilateralism’ in international economic relations. Reaching a multilateral agreement has become less and less likely due to the continued antagonism between the ‘global north’ and ‘global south.’ Thus, states are incrementally reverting to bi- and plurilateral models for their respective external trade policies.

Within this system created by the ‘new bi- and plurilateralism’, the Trans-Pacific Partnership (TPP) concluded between the US and eleven other Pacific Rim countries (including New Zealand, Mexico, Japan and Australia) has been a major game-changer. Negotiations on the TPP were concluded at the end of last year; the treaty creates the biggest free trade zone in the world, comprising up to 800 million people and a combined GDP of over 27 trillion US-\$.

The EU under pressure in the ‘competition of systems’

The TPP puts the EU under pressure. Why? An explanation is provided by Meessen’s theory that external economic law is increasingly itself subject to a global ‘competition of systems.’ According to Meessen, governments compete with one another to offer the most attractive economic system to market participants worldwide. Part of this economic system is economic law i.e. the rules of market access, regulations governing labour and environmental standards, investment protection etc. Thus law itself becomes an economic good.

After the conclusion of TPP, Brussels feels a certain pressure to move forward with TTIP in order not to 'fall behind' in this 'competition' of economic systems. The EU in that sense is obedient to the logics of the world trade system, which still today are dominated by the agenda of liberalized trade. Consequently, they require ever-new measures to allow goods and services to circulate more freely on a global scale.

Against this backdrop, the strong determination within the EU Commission to conclude TTIP despite its unpopularity and the continued opposition from the European public notwithstanding makes perfect sense. Without TTIP, the EU could lose ground in the international competition to provide the best and most liberalized regulatory environment – which, following neoclassical economic theory will create a profitable environment for business. Equally in this context, the EU's efforts concerning CETA, the FTA with Singapore and the many other proposed or concluded agreements (including with Vietnam, Australia, New Zealand and Malaysia) have to be understood.

The real issue lies in the regulatory dimension of the treaties

But TTIP, CETA and other comprehensive FTAs also mark a new era in a different respect. Since the entry into force of the GATT in 1948, the agenda of liberalizing trade had been effectuated through the gradual reductions of tariffs and elimination of non-tariff barriers.

States, however, deem this process as no longer being sufficient. After various rounds of tariff reductions in the past almost 70 years, there simply is not much leeway left for states in using this leverage.

As a new method, they seek to harmonize regulatory standards across the national and regional borders of the respective treaty parties in order to further facilitate the flow of goods and services between them beyond the level achieved by just the removal of trade barriers.

The principal issue of TTIP and the like lies in this attempt to reach regulatory coherence between systems with at times fundamentally different regulatory approaches. Potentially, comprehensive FTAs can lead to major changes in the regulatory environment of the markets and societies involved. This is also what causes large parts of the public uproar – the European public fears not just that their governments will be abolishing import restrictions for chicken from the US but, primarily, unknowingly eating chicken treated with chlorine.

Yes or no to TTIP – a question of priorities?

The conflict between the EU executive and the public thus is one of diverging priorities. On the one hand, there are those, like the EU Commission, who prioritise the fundamental logics of the global trade system, which demands through the necessity of market forces, a reduction of any potential impediment to the free flow of goods (and services). They are therefore willing to treat national laws as economic goods themselves that eventually have to give way to ‘harmonization’ measures for the sake of economic growth.

And there are those, on the other hand, who are more concerned about changes in the regulatory environment potentially leading to a dilution of consumer standards now and the neutering of their government’s ability to regulate in

the future. They are thus rather more willing to eschew economic growth.

The debate needs to leave its hermeneutic circles

What we witness therefore in the rawness of the public debate is a miscommunication by both groups from within their hermeneutic circles.

The EU seems to continue to be obedient to the logics of the liberalized world trade system and thus categorically wants to pull through with TTIP, CETA and other comprehensive FTAs. It is willing to accept conflicts with civil society, convinced it is doing 'the right thing.' The critics within civil society, on the other hand, see this established approach as evidence for exploitative configurations within the global trade agenda that threaten the regulatory environment they are not willing to give up.

Evidently, such positions lead to a largely redundant dialogue, in which both sides present their arguments with empirical and moral certitude. The tone of the debate therefore ignores important questions relating to the framing of the debate and the costs and benefits of FTAs to European societies.

The pivotal question is whether it is acceptable to dilute product standards for the sake of slight and uncertain growth, estimated to amount to a maximum of 0.5 % of the EU's GDP? Is the quality of the goods we consume less important than overall material welfare? What are the likely effects of a freeze on further regulation in specific sectors?

Is it even time to introduce other parameters instead of or in addition to GDP to measure economic progress as Joseph Stiglitz and Christine Lagarde recently argued?

Only if the antagonists in the debate leave their hermeneutic circles will they be able to find answers to these questions. In fact, it is high time they do, for these answers are urgently needed for setting the direction towards a 'modernized' world trade system.

Responses to this post can be found [here](#) and [here](#).

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